IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Civil Revision No. 41 of 2004 **Decided on: 28th March, 2008**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 28.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 41 of 2004

Smt. Savita Agrawal
W/o Sri Badri Vishal,
Bakshikhola, Almora,
District Almora.

..... Revisionist

Versus

1. Sarada Math Nyas thorugh
   Pravajika Prabha Prana (Sanyasi)
   Adhyaksha, Sri Sarada Math,
   Dakshineshwar Calcutta (Kotkata) W.Bengal.
2. Pravajika Prabha Prana
3. Pravajika Bhuma Prana
   R/o Sri Sarada Math Shakha Kasardevi,
   Patti Khas Parja, Tehsil & Distt. Almora.
4. Smt. Sonam Chhodam
   W/o Head Lama Kunsang Reging,
   Kali Math Estate, Patti Khas Parja,
   Tehsil & District Almora.

..... Respondents

Mr. B.D. Pandey, learned counsel for the revisionist.
Mr. Sudhir Kumar, learned counsel for respondents.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) This revision, is directed against the finding and order dated 08.06.2004, whereby learned Civil Judge (Senior Division) / F.T.C. Almora has decided issue Nos. 3 and 5 in negative in Civil Suit No. 38 of 2002.

2) Relevant issues framed by the trial court, on which impugned findings are given, read as under:

3. *Whether, the suit is under valued and court fee paid is insufficient?*

5. *Whether, the suit is bad for non-joinder for necessary party?*

4) Perusal of the copy of plaint shows that three plaintiffs namely, Sarada Math Nyas, Pravajika Prabha Prana and Pravajika Bhuma Prana have filed the suit for cancellation of sale deed and injunction against the defendant / revisionist and one another person. In paragraph No.2 of the plaint it is pleaded that the plaintiff No. 1 is a registered society and Prabha Prana is its recognized representative. It is alleged in the plaint that the defendant No. 1 / revisionist has started encroaching upon the land owned by the plaintiff society and started constructing a hotel on it. It is further alleged in the suit by the plaintiffs, that the land purchased for Rs. 1,15,000/- by executing a sale deed by the defendant / revisionist from defendant No. 2, is liable to be cancelled as the land belongs to the plaintiff society. As per the plaint, value of the suit has been made at Rs. 1,15,000/- and court fee had been paid at 30 times of the land revenue payable on the land in question.

5) Under Section 7(iv-A) of the Court Fees Act, 1870 (as amended by State of U.P. applicable to Uttaranchal), in a suit for cancellation of an instrument (including sale deeds), the property involved is required to be valued at the amount mentioned in instrument or value of the property to which such instrument relates. It is further provided in the Explanation to said sub-section (iv-A) that ‘value of the

property' for the purposes of the sale deed shall be market value which in the case of immovable property shall be deemed to be the value computed in accordance with sub-section (v), (v-A) or (v-B), as the case may be. Section 7(v) of the Court Fees Act, 1870, provides that where the revenue is settled in respect of a land the market value of such land shall be assessed at 30 times of such revenue. In view of said provision of law, neither the suit appears to be under valued, nor the court fee paid appears to be insufficient. Therefore, finding on issue No. 3 given by the trial court needs no interference.

6) On issue No. 5, it is argued on behalf of the learned counsel for the revisionist that in view of provisions of Section 48 of the Indian Trusts Act, 1882, all the trustees are necessary to be impleaded for maintaining the suit on behalf of the trust. This Court agrees with the submission of learned counsel for the revisionist that the suit should have been filed on behalf of a trust by all the trustees unless the person is duly authorized to act in this behalf. However, mere that argument doesn't help the defendant / revisionist. For throwing a suit on said ground, the defendant should have pleaded which of the trustees of the trust are left out and not made a party to the suit. The defendant / revisionist failed to show or name the trustee, who is not impleaded or has not authorized the plaintiff to maintain the suit. In the circumstances, this Court is of the view that the trial court has rightly decided issue No. 5 in negative and in favour of the plaintiff.

9) For the reasons as discussed above, the revision has no force. The same is liable to be dismissed. The revision is dismissed.

(Prafulla C. Pant, J.)

Dt. March 28, 2006.
H. Negi